Supreme Court, U. S.
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No. 75-1473

In the Supreme Court of the United States

OCTOBER TERM, 1975

E.I. DUPONT DE NEMOURS AND COMPANY, ET AL., PETITIONERS

v.

RUSSELL E. TRAIN, ADMINISTRATOR OF THE ENVIRONMENTAL PROTECTION AGENCY

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

MEMORANDUM FOR THE RESPONDENT

ROBERT H. BORK,
Solicitor General,
Department of Justice,
Washington, D.C. 20530.

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Respondent agrees that the Court should grant the petition for a writ of certiorari in this case. The questions presented are identical to those raised in *E.I. duPont de Nemours & Co.* v. *Train (duPont I)*, No. 75-978,[1] petition for a writ of certiorari granted April 19, 1976. If, as we suggest, the Court grants the petition here and consolidates the case with *duPont I*, this will facilitate consideration of all of the issues concerning the authority of the

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[1]In our response to the petition in *duPont I*, we agreed that a writ of certiorari should be granted. We noted, however, that it might be unnecessary for the Court to reach the merits of the case since the court of appeals had confined its decision solely to the issue of its jurisdiction. In *duPont II*, the court fully addressed the merits of the case, so that all issues are now ripe for review by this Court.

Administrator of the Environmental Protection Agency to issue effluent limitations governing discharges from existing sources of pollution pursuant to Sections 301 and 304 of the Federal Water Pollution Control Act, as added in 1972, 86 Stat. 844, 850, 33 U.S.C. (Supp. IV) 1311 and 1314.[2]

With this memorandum, we are simultaneously filing a cross-petition in this case challenging the court's disposition of petitioner's attack on the new source standards of performance promulgated under Section 306 of the Act, 33 U.S.C. (Supp. IV) 1316.

Respectfully submitted.

ROBERT H. BORK,
Solicitor General.

MAY 1976.

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[2]Since the granting of the petition in *duPont I*, two other courts of appeals have held that regulations of the Administrator establishing effluent limitations guidelines are directly reviewable in the courts of appeals. *Hooker Chemicals & Plastic Corp., et al.* v. *Train*, C.A. 2, No. 74-1687, decided April 28, 1976 (guidelines for the phosphate industry); and *American Frozen Food Institute* v. *Train, etc.* C.A.D.C., Nos. 74-1464, 74-1513 and 74-1840, decided May 11, 1976 (guidelines for the potato processing industry).